THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.12271 of 2000

ORDER: (Per M.Venkateswara Reddy, J)

Aggrieved by the order, dated 17-12-1999, of the Central Administrative Tribunal ('the Tribunal' for short), Hyderabad Bench, wherein his application in O.A.No.926 of 1999 seeking a direction to the respondents herein that he should be treated as a pensionable employee and he should be allowed pension for the services rendered by him in two spells was dismissed, the petitioner, a retired Assistant Station Master of South Central Railway, Secunderabad, filed this writ petition seeking quashing and setting aside of the order as opposed to the established principles of interpreting a beneficial rule in favour of the employee.

The petitioner was appointed as Reserve Signaller on 06-10-1949. When he was working as Station Master, Madhira in Secunderabad section of South Central Railway,
a departmental enquiry was held against him on the charge of cheating the Government and it culminated in his removal from service in DAR Proceedings No.CON/SE/C26/75, dated 24-05-1979. On appeal the appellate authority, directed that he be re-appointed as a fresh entrant for all purposes. Accordingly, he joined as a fresh entrant in the post of Assistant Station Master on 07-08-1979 and retired from service on attaining the age of superannuation on 31-07-1985.

Originally, there was no Pension Scheme for the railway employees, instead they were governed by the State Railway Provident Fund (Contributory) Rules. In the year 1957, Pension Scheme was introduced and the employees were given option either to opt to come under the pension scheme or to remain under

the State Railway Provident Fund (Contributory) Rules. The petitioner herein did not opt for the Pension Scheme. In the year 1979, a Circular letter No.P(R) 500/VII, dated 13-09-1979, was issued, giving option to the Railway Servants governed by the State Railway Provident Fund (Contributory) Rules to come over to pensionable service and to the Family Pension Scheme, 1964. Yet another Serial Circular letter No.145/82, Circular letter No.P (R) 500/VIII, dated 08-10-1982, was issued for the same purpose. On all the occasions whenever option was given to the employees, the last date for exercising their option was extended from time to time. The petitioner never opted to come under the Pension Scheme. We have noted that the petitioner entered as fresh entrant in the Railway Service as Assistant Station Master on 07-08-1979. He put up service of about six years 11 months in this second spell of service. The qualifying service for pension is 10 years. The petitioner made a representation to the railway authorities for treating the break in service between the date of removal and the date of joining consequent upon re-appointment as fresh recruit as duty period to enable him to claim qualifying service of ten years. His request was rejected on 29-04-1985. He made repeated bids in that regard, but in vain. Once the matter was referred to the Railway Board also, but the claim was rejected. He knocked at the doors of the Central Administrative Tribunal–II repeatedly. The Tribunal once by its order, dated 03-10-1997, in O.A.No.281 of 1993 directed the railway authorities to dispose of the representation of the petitioner, dated
09-08-1996, relating to break in service, within the time stipulated by it. The General Manager, South Central Railway, Secunderabad passed an order dated 20.09.1998 treating the break in service period i.e., between the date of removal and the date of joining as a fresh entrant as *dies non* and declined to give pension for the aforesaid break period. With undaunted spirit, the petitioner made yet another representation, it was also rejected on 27-01-1999 in letter No.P94/KG/Hyd 2340/98. Questioning the correctness of it, he filed O.A.No.926 of 1999, in which the impugned order came to be passed.

The learned counsel for the petitioner contends that the petitioner is ready to pay back the amounts received by him under the Provident Fund Scheme and, therefore, the Railways would have extended the benefit under the Pension Scheme to him. On the other hand, the learned counsel for the respondents

contends that as the petitioner never exercised his option to come under the Pension Scheme and did not complete the qualified service, the Pension Scheme cannot be extended to him.

The question that crops up for consideration is:

Whether the petitioner is entitled to get the benefit under the Pension Scheme.

Before 1957, the only scheme for retirement benefits in the Railways was the Provident Fund Scheme.

It was replaced by the Pension Scheme in 1957. When the Pension Scheme came into force, those who entered the service prior to the scheme coming into force were given option either to retain the Provident Fund benefits or to switch over to the pensionary benefits. When an employee gave option for the Pension Scheme, the matching railway contribution made by the Railways to the Provident Fund Accounts would revert to the Railways. The Pension Scheme was successively liberalized, while the Provident Fund Scheme remained stagnated.

Commencing from 17-09-1960 till the date of retirement of the petitioner on 31-07-1985, eleven notifications were issued by the Railways giving option to come under the Pension Scheme. But the petitioner never opted to come under the Pension Scheme. As pensionary benefits of railway employees were enhanced from time to time by different ways, such as altering the formula for computing the pension by merging the dearness allowance in the pay for computing pension, by removal of the ceiling of pension and by introducing or liberalizing the Family Pension Scheme etc., some of the employees who opted to remain in the Provident Fund Scheme, which remained stagnate through out, appears to have realized that they committed a folly in opting to remain in the Provident Fund Scheme and knocked at the doors of the Apex Court, which had an occasion to consider, in a batch of Civil Writ Petitions and two Special Leave Petitions in ***KRISHENA KUMAR v. UNION OF INDIA*** the question whether the Provident Fund retirees of Railways, who failed to exercise the

option within time, were entitled to be included in the Pension Scheme on the ground of parity. The entire case of the petitioners before the Apex Court in the said case was sought to be based on an earlier decision of the Supreme Court in ***D.S.NAKARA v. UNION OF INDIA***.

D.S.NAKARA's case related to Central Government servants. It was held that all pensioners have equal right to receive the benefits of liberalized Pension Scheme and pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension.

The question decided in D.S.NAKARA's case, as pointed out, before the Supreme Court in KRISHENA KUMAR's case (1 supra), is as under:

> "Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ('1972 Rules' for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Art. 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14?"

The Supreme Court in KRISHENA KUMAR's case
(1 supra) at length considered the question as to what was the ratio decidendi decided in D.S.NAKARA's case (2 supra) and how far that would be applicable to the case of Provident Fund retirees and concluded as under:

> "30. Thus the Court treated the pension retirees only as a homogeneous class. The P. F. retirees were not in mind. The Court also clearly observed that while so reading down it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notification with respect to the specified date. All the pensioners governed by the 1972 Rules were treated as a class because payment of pension was a continuing obligation on the part of the. State till the death of each of the pensioners and, unlike the case of Contributory Provident Fund, there was no question of a fund in liberalising

pension.

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32. In Nakara it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C. P. F. scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an, employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. it would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It, cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case."

The Apex Court finally held that the provident fund retirees who failed to exercise the option within the time are not entitled to be included in the Pension Scheme on the ground of parity and Provident Fund Scheme retirees and pension retirees constitute different classes.

The Supreme Court again in ***V.K.RAMAMURTHY v. UNION OF INDIA AND ANOTHER,*** where the retiree from Railways was given six opportunities to switch over to the pension scheme before retirement and yet he did not exercise option to switch over to the Pension Scheme, held that he is not entitled to claim pension as Pension and Provident Fund Schemes are structurally different. KRISHNENA kumar'S CASE (1 supra) and other subsequent decisions of the Apex Court were referred to in this case.

It may not be out of place to mention here that this Court in ***K.CHALAPATI RAO AND ANOTHER v. STATE BANK OF INDIA***, took the view that the pension is not a fundamental right either traceable to Article 16 or 21 of the Indian Constitution, but it is a scheme and not a right and unless the employee falls within the ambit of the scheme,
it cannot be claimed as of right when he is not covered by the Pension Scheme.

In the case on hand, the petitioner, as already pointed out, never opted for the Pension Scheme. Therefore, in view of the repeated authoritative pronouncements of the Supreme Court, we hold that the petitioner herein is not entitled to claim pension even if he is prepared to refund the contribution of the Railways made under Provident Fund Scheme for his benefit.

The learned counsel for the petitioner relied upon a ruling of the Apex Court rendered in ***UNION OF INDIA AND OTHERS v. D.R.R. SASTRI***, it was a case where a railway employee (Respondent) while in service went on deputation to the Heavy Engineering Corporation and when he was in the Railways he had opted for contributory Provident Fund Scheme. He exercised his option thereafter for permanent absorption in Heavy Engineering Corporation and submitted his resignation from the Railways, which was accepted. Thereafter, liberalized pension scheme was introduced by the Railways. The Railway Board gave opportunity to all the persons governed by the Provident Fund Scheme to opt for the liberalized pension scheme by addressing a letter to all of them. But the said letter of the Railway Board was not brought to the notice of the respondent (before the Hon'ble Supreme Court). He addressed a letter to the Railway Board stating that he may be allowed to exercise the option. The

Railway Board rejected it. The matter was challenged before the Tribunal, which held that he was entitled to exercise option for coming over to the pension scheme in terms of the letter of the Railway Board where it asked its employees to exercise option. The Apex Court took the view that on account of the fact that the employee was not put on notice about the exercise of option he was prevented from exercising his option and held that despite the expiry of the time specified by the Railways for opting the liberalized Pension Scheme the Railway employee is entitled to opt for the pension scheme on refunding the amount he had already received. Thus, the facts of that case stand on a separate footing and have nothing to do with the facts of the present case where in spite of several notifications issued by the Railways for giving option and having knowledge of the same, the petitioner had not opted for the Pension Scheme. Therefore, the said decision has no application. Having never opted for the Pension Scheme the petitioner cannot turn round now and say that he is prepared to deposit the amount received by him towards employees share of Provident Fund and therefore he may be paid pension.

In the light of the foregoing discussion, we do not see any valid reason to quash or to set aside the order of the Tribunal which confirmed the stand taken by the Railway authorities. The writ petition is liable to be dismissed with costs.

Accordingly, the writ petition is dismissed with costs.

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J.CHELAMESWAR, J.

Date: 10.04.2006.

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M.VENKATESWARA REDDY, J.

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